

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 10, 2009 Session

IN RE: SAVANNAH S., ET AL.

**Appeal from the Circuit Court for Hamilton County
No. 07D672 L. Marie Williams, Judge**

No. E2008-01158-COA-R3-PT - FILED JULY 16, 2009

The State of Tennessee Department of Children's Services ("DCS") filed a petition seeking to terminate the parental rights of D.S. ("Mother") to her minor children, Savannah S., Jason S., Chloe S., and Magen¹ S. (collectively "the Children"²). After a trial, the Trial Court entered an order finding and holding, *inter alia*, that there was clear and convincing evidence of grounds to terminate Mother's parental rights to all four of the Children under Tenn. Code Ann. § 36-1-113(g)(2) and (g)(3), and that it was in the best interest of Jason, Chloe, and Magen for Mother's parental rights to be terminated. The Trial Court then held that it was not in the best interest of Savannah for Mother's parental rights to be terminated. Mother appeals the termination of her parental rights to Jason, Chloe, and Magen. DCS and the Children's guardian ad litem appeal the Trial Court's determination that it was not in the best interest of Savannah for Mother's rights to be terminated. We affirm the termination of Mother's parental rights to Jason, Chloe, and Magen. We reverse the Trial Court's finding that it was not in the best interest of Savannah for Mother's parental rights to be terminated and hold that clear and convincing evidence exists that it was in the best interest of Savannah for Mother's parental rights to be terminated as to Savannah.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed, in part; Reversed, in part; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

¹In the record on appeal, Magen's name is spelled sometimes as 'Magen' and sometimes as 'Megan.' We have left the misspellings intact within quotations from the record with the understanding that both spellings refer to the same child.

²For the sake of simplicity, when referring to the children individually we use each child's first name and omit the last initial.

Sherry L. Park, Charleston, Tennessee for the Appellant, D.S.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Elizabeth C. Driver, Senior Counsel; for the Appellee, State of Tennessee Department of Children's Services.

Robert D. Bradshaw, Chattanooga, Tennessee, Guardian Ad Litem for Savannah S., Jason S., Chloe S., and Magen S.

OPINION

Background

In April of 2007, DCS filed a petition seeking to terminate the parental rights of Mother and her husband, J.S., to the Children who all had previously been adopted by Mother and J.S.³ Mother moved to consolidate the termination case with a pending appeal to the Trial Court of a Juvenile Court finding that the Children were dependent and neglected and that Mother and J.S. had committed severe abuse against Savannah and her adopted sister Selena S.⁴ The Trial Court consolidated the two actions, and the case proceeded to trial without a jury.

Victoria Davidson, a therapist at the Children's Advocacy Center, testified at trial. Ms. Davidson, a licensed clinical social worker and a registered play therapist with training in forensic evaluations, provides therapy for sexually abused children and does forensic evaluations. Ms. Davidson has counseled around 250 or 300 sexually abused children during her seven years with the Children's Advocacy Center. Ms. Davidson counseled Savannah and Selena after the two came into DCS custody because they had been sexually abused. Ms. Davidson also counseled Chloe. Ms. Davidson testified that Selena was seven years old when she began counseling with Ms. Davidson and that Savannah is a year younger than Selena. Ms. Davidson testified:

Savannah was very small for her age.... She was very, very small. She's - - she was tested out with an IQ of 72, and 70 is mild MR, so she had school problems. She had social skills deficits also. She reported having no friends. But, she was very - - she's an anxious little girl. She would shuffle papers. She would hold a little stack of papers in her left hand and shuffle them, just with her thumb.

Ms. Davidson testified that Savannah's behaviors got better during the time of the counseling, except for the time period when Savannah was visiting with Mother and J.S. Ms. Davidson testified that during that time period:

³J.S. voluntarily surrendered his rights to Savannah S., Jason S., Chloe S., Magen S., and Selena S., and is not involved in this appeal.

⁴Mother voluntarily surrendered her rights to Selena S.

The shuffling escalated, and the hypervigilance [sic], she - - she would - - if she heard a noise way downstairs, she would jump up and say, What's that, what's that, and I'd have to open the door and check and show her that there was nobody out there. She was always worried, always on guard about somebody coming.

When asked what process she uses to begin counseling, Ms. Davidson testified:

I establish a relationship with the children. Usually, I start working on boundaries, and I establish safety with the child, letting them know that they are safe in my office. I start some educational - - with some educational material, videos, workbooks, that sort of thing.... I use child center play therapy, which is nondirective play therapy. I allow the child to just play, and observe the play.

Ms. Davidson testified that she does not ask the children she counsels what happened. Ms. Davidson testified that at her second session on October 31, 2005, Savannah:

told me that [Mother] had rub - - had rubbed her and rubbed her private parts with a washrag.... Well, I asked her how it happened, if she had been taking a bath, if she was in the bathtub, and she said, no, she was on the living room floor, she had no panties on, and her legs were spread apart, and [Mother] rubbed and rubbed her with a washrag.

Ms. Davidson testified that Savannah said that J.S. was there watching when this happened. Ms. Davidson testified that "[Savannah] said, It hurt, and she said, Her rubbed and rubbed and it hurt." Ms. Davidson also testified that Savannah spoke about this incident on several other occasions and on one occasion "[Savannah] said, Her is my mommy and that's okay," which Ms. Davidson took to mean that Savannah no longer thought that it was a bad touch because it was her mommy that was doing it.

Prior to Savannah's disclosure about Mother, Ms. Davidson had been counseling Savannah for abuse by an adoptive brother, Michael. When asked if Savannah ever told her about the abuse by Michael, Ms. Davidson testified:

She showed me. The children will show you not tell you. So, no, she did not verbally tell me.... When I'm working on boundary issues with children, especially younger children, I do a body outline with them, where we - - you know, they lay down and we outline them and then we draw body parts and we put stickers on the parts of your body where people hurt you, like spider stickers or some kind of bad sticker, and that's where she said, Michael hurt me here, and she put a sticker on her vaginal area, and then she turned it over and put a sticker on her bottom.

Ms. Davidson testified that Savannah "told me that she had told [Mother] [about the abuse by Michael] and [Mother] said that he was going to the Army." When asked why she stopped

counseling Savannah in May of 2007, Ms. Davidson testified: “Savannah stated that she was tired of talking about good touches and bad touches, and we had covered everything that we needed to cover.”

Ms. Davidson also counseled Selena about sexual abuse perpetrated by her adoptive brother, Michael. Ms. Davidson testified that Selena told Mother about what Michael had done to her and Selena told Ms. Davidson “that her mother had called her a liar and whipped her, and so she went to the school, she told them at school.” Selena also told Ms. Davidson that J.S. touched her in the same way that Michael did.

When asked, Ms. Davidson testified that during the time she counseled Selena, Selena never made any statements that were inconsistent with her allegations of being touched inappropriately by Michael and J.S., nor did she ever recant any of the allegations she had made. Savannah likewise never made any inconsistent statements about the allegations and never recanted any of the allegations she had made to Ms. Davidson about inappropriate touching by Michael or Mother.

Ms. Davidson testified that during the time that she was counseling her, Savannah suffered a regression and began using baby talk. Ms. Davidson was told that at that time Savannah had started visiting with Mother and J.S. at Dr. Biller’s office. Ms. Davidson testified that it was around that same time that Savannah made the statement “that’s okay, her is my mommy, her can do that.” During that time period, Ms. Davidson also observed that Savannah “was anxious, more anxious. Very hypervigilant [sic].”

Ms. Davidson testified:

[Savannah] engaged in posttraumatic play, which is a reenactment [sic] of a trauma for a child, and they play it over and over and over again until they resolve it.... Savannah’s play was that she would dress up in a police costume and rescue a little girl who’s being hurt and take her away and put the bad person in jail, and it would be different figures, different things would be the bad person.

Ms. Davidson testified: “When I last saw Savannah, she was no longer displaying symptoms of PTSD. She was not having nightmares. She was not hypervigilant [sic]. She had stopped the repetitive play. The posttraumatic play was finished. She - - I had not seen her shuffle papers in several months, since March. She was happy.”

When asked if she saw anything that would make it difficult for Savannah to adjust if she were put back into Mother’s custody, Ms. Davidson testified: “Savannah would have difficulty worrying about Michael being there, that is her very large fear. She has a huge fear of Michael.... That’s a safety issue for Savannah.” When asked if they could reassure Savannah that Michael was not going to come around if that would effect the situation, Ms. Davidson stated: “I don’t know how you would assure her of that.... It would definitely have to be addressed.... She’s a child. You’re

not talking to an adult.” When Ms. Davidson was asked if her opinion would change if Mother had known about the sexual abuse and done nothing to stop it, she agreed that a home like that would not be safe for Savannah to be returned to.

Ms. Davidson also counseled Chloe. Ms. Davidson testified that Chloe mentioned Michael one time during the counseling and told Ms. Davidson that Michael was gone and could never touch her again.

Edwinna Eyrich, a foster care mother for the Children, testified at trial. The Children went to Ms. Eyrich’s home when they first came into State custody and then left to go into kinship care. Later, several of the Children returned to Ms. Eyrich’s home. Ms. Eyrich testified that she had all five of the Children in her home before the Children left to go into kinship care. Selena and Savannah returned to Ms. Eyrich’s home first, and Chloe and Magen returned later. Jason did not return to Ms. Eyrich’s home but stayed in kinship care with family members.

At the time of trial, Ms. Eyrich had Savannah and Chloe in her home. When asked what Savannah was like when she first came to Ms. Eyrich’s home, Ms. Eyrich testified:

Savannah, when she first came into my home, she was very timid, very withdrawn. She - - when we would eat, we always noticed how she put her, you know, her arm around her plate to eat, to feed herself. Very, very shy, very withdrawn, that’s what comes to my mind. Very timid.... Anxious. A lot of anxiety.... Savannah, when she first came, as well as now, had a lot of touching issues.... I mean always having to touch someone, whether it’s an inappropriate touch or an appropriate touch, and the inappropriate touches would be something in the effect of when she would hug myself, actually, would try to rub my chest. And the other touches would be trying to put her hand under the baby’s diaper inappropriately, on the outside of the diaper, but still inappropriately, the way she would do. Kissing, trying to kiss siblings on the mouth, and not just a little kiss, literally trying to kiss like a man and woman would kiss, yes.... She would grab them - - Savannah, when she does that, she grabs and pulls to you - - pulls the person to her and she just clutches them, as well as holding a child down to try to get on them to kiss them.

Another behavior problem that we have that we deal with on a daily - - and I’m talking these are daily basis, this is not, okay, today this is going to happen and tomorrow it’s not, okay, this is daily - - is getting blankets, trying to lure whether it was Chloe, Megan, whoever under the blanket with her.

We have put safety precautions in our home just to protect not only the other children, but as well as, you know, my grandchildren, foster children that are to come. I mean, we constantly - - Savannah is never left alone with a child in our home, never.

Ms. Eyrich testified that there has been no improvement in Savannah's behavior with regard to the touching issues.

When asked about differences in Savannah since Savannah has been in her home, Ms. Eyrich testified:

Savannah used to have the behavior of shuffling papers. It was an anxiety thing, I'm sure, a compulsion thing, to shuffle, shuffle constant. Savannah no longer does that, no longer at all, and that - - that's a huge change. And the teachers have noticed that, because in school it was try to shuffle, shuffle, instead of - - you know, she couldn't focus. And although there are still some issues on focusing, with the ADHD, she still is not shuffling papers.

Ms. Eyrich testified that Savannah has a lot of anxiety and fears and that Savannah has told her she is afraid of "Michael touching her, hurting her privates. Savannah was very fearful. It probably took us, I don't know, the first year and a half to even get her to realize she was safe and was not going to be hurt again." Ms. Eyrich testified:

Savannah's very fearful of windows in the home, somewhat, Michael coming in. Savannah's very fearful of the skylight that's over, you know, one of our bathtubs. She thinks Michael's up there looking in. And that, that is, actually, as early as just last week, also. A lot of anxieties over stuff like that. Making sure doors are locked at night.... She has another fear of like being spanked with a belt, that she's mentioned, and so she has that fear of I don't want to be spanked with a belt ever again, that, you know, she had been spanked with a belt.... She said that [J.S.] spanked her with a belt, and that he spanked her really, really hard and it really hurt."

When asked if Savannah had reported telling Mother about Michael's abuse, Ms. Eyrich testified:

The only thing I recall her saying on that is that she said [Mother] was on the phone once, when [Mother] had called, she was at work, Michael was babysitting them, he was their babysitter, and [Mother] has [sic] called on the phone and Michael had brought them from the living room into their bedroom. And I had asked her, Well, you know, what was going on? And she said, Well, the phone rang, and it was [Mother] on the other end - - before, I guess, maybe he got to do anything. But, then she said he stopped to talk to [Mother], and then she - - I - - I can't remember what she said after that.

Ms. Eyrich testified that Savannah was six years old when she came to Ms. Eyrich's home and weighed only twenty-seven pounds. Ms. Eyrich stated that at the time of trial, Savannah weighed forty-five pounds.

Chloe, who was around three years old at the time she came to Ms. Eyrich's home, was still on a bottle drinking rice cereal. When asked about Chloe, Ms. Eyrich testified: "Chloe is doing good physically and stuff. Chloe has extreme nightmares. I would, probably, say anywhere from three to seven nights a week, just serious nightmares. I mean, screaming to the point of like it wakes me up into a terror just to hear how she's having a nightmare."

Ms. Eyrich described an incident that happened during the first week that Chloe was in her home stating:

I potty-trained Chloe, started potty-training Chloe, and she had little panties on one day, and we were getting ready to go somewhere, and we had a sunroom in our bathroom right there, and she got up and she was going to go to the bathroom, and before she made it to the bathroom, she just urinated all over herself, and it was on the floor.

Well, all of a sudden - - I didn't see - - I was right there, you know, by the door, but I didn't see it, and she let out this scream that I have never in my life heard. It scared me. She had pottied on herself, and I said, Honey, it's okay. She goes, Please don't hit me with a belt, don't hit me with a belt, please. Just crying, screaming.

Ms. Eyrich further testified:

Chloe's behavior has changed with me. When I - - when Chloe came, she was very stand-offish. You know, you can speak to me, but I don't know that I'm going to answer you. Chloe has progressed so much. She is - - she's gaining weight, she's eating great. She loves school. She's doing great in school. The teacher sends notes home all the time about Chloe, how wonderful, how well she's doing.

And just, probably, about a month ago, we noticed - - well, I guess about six weeks ago, we noticed this turn in Chloe's life that was so exciting to us, because all of a sudden Chloe is totally open to us. She's not only hugging and, you know, just - - she just is so carefree now. She just - - it's like she just blossomed into this beautiful flower that wasn't there before.

Ms. Eyrich testified:

I would love to adopt these children, except with Savannah, I can't be guaranteed of how I could do this on a daily basis forever, unless there was some kind of help or - - you know, more than what we know now of what to do, you know, with the touching issues, to protect my children in my home, my grandkids. You know, but then to think of saying just, outright, no, I - - you know, my heart says different.

Magen is not in Ms. Eyrich's home anymore. When asked why Magen was not in her home anymore, Ms. Eyrich testified:

There was a particular reason, yes. She - - very high maintenance. She was very - - Megan needed one-on-one attention. Megan had - - to me - - and this is just as a mother. To me, Megan - - all of these children, not only Megan, were so needy when they came into my home that the first two weeks I looked and I had no clue how I would do this, because I didn't know how - - I didn't know I could even find any more of any of us to give them the love that they needed. They were - - it was like they were starved. They were like sponges, so hungry. Megan needed a lot of one-on-one that I couldn't give her at the time, and I wish I could have.

When asked why Selena left her home, Ms. Eyrich testified:

Selena had a lot of acting out that we just didn't think we could handle.... It was just - - Selena had a lot of - - the abuse was constant on Selena's mind, and that - - that's what she talked about a lot. As far as having a lot of crying breakdowns herself, that's why that we took her to the emergency room on one of them, because we just weren't sure, you know, was she okay, was she not okay.

David Allen Rose, Ph.D., a psychologist who does work primarily for DCS, testified at trial. Dr. Rose was asked if he had any concerns about Savannah's behavior in the foster home and he testified:

Well, I have concern, like the foster mother would have concern about her behavior, but it's quite clear that there is some positive things that are going on in terms of stabilization. When a child comes in the way she was described as coming in, as very, very underdeveloped and - - and having such severe and relatively inappropriate behaviors for her age, there is a major gap that had to be supported.

In the case - - in the research that I've shown - - that I've seen, it's real evident that the most protective factors to help children who have been severely abused come from the care-taking parent, if they're provided in a trusting and consistent fashion, and that's probably the most important variable that can help a child improve and make - - make gains. It sounded like the foster parent has done a good job of trying to provide that consistency and - - and protect and support that has helped enhance those protective factors for this - - this child.

When asked what the effect would be on a child who was being sexually abused and not protected by a parent, Dr. Rose testified:

Well, the - - research has shown that it's significantly poor social/psychological outcomes for kids that have been faced with complex trauma, maltreatment, whether

it be - - it's done simultaneous or continuous. It affects multiple domains of the child's life, both at the time and continuously throughout their lives, and the outcomes are typically very poor.... They have a difficult time attaching to people. They have a difficult time establishing relationships, socially adjusting to life demands oftentimes. Less effective in life, in general, than children who are not maltreated. Issues of - - there is some increasing research that there is poor neurological impact on the children's development, suggesting that there are ways of regulating emotion and the functions of the brain, like the amygdala and the hypothalamus, and the things that relate to emotional regulation are significantly compromised, and that affects the way they process information as they get older.

When asked if Savannah's behaviors of inappropriate touching and kissing were typical of a girl of her age, Dr. Rose testified:

As I understand developmental psychology and the development of children, no, those are not typical behaviors. They are extreme behaviors that are seemingly not responsive to repeated guidance at this point.... I think the literature and the results of a lot of work with sex abuse suggests that people that have been abused continue to focus on becoming over-sexualized and acting out sexually.

When asked how long it might take for Savannah to resolve these issues, Dr. Rose testified:

Well, that's like a crystal ball. I'm not sure how long it might take. If she's held onto it this long, it probably indicates that she was very severely traumatized, and that the impact of that continues to fester with fears of - - as we've described before, of the perpetrator coming back at any point in time, through windows and skylights and such. So I'm sure it remains real and it's going to take a lot of time, with a lot of trust, and a lot of consistency by caregivers [sic] and - - to help a child that is relatively low-functioning to start believing and accepting that they're safe.

Mother testified at trial that she is a registered nurse and has been for nineteen years. She works on a critical care floor and also has been a therapeutic and regular foster parent for about twelve years. Mother testified that during the time she has been a foster parent, over a dozen foster children of various ages and both sexes have lived in her home. Michael was her first foster child, and he came to her approximately fifteen or sixteen years ago when he was four years old. At that time, Mother and J.S. were married and Mother's biological son and daughter, Scott and Tanya, lived in the house. Additionally, J.S.'s biological children, Mandy and Sean, spent every other week in the household with Mother and J.S.

Mother and J.S. adopted Savannah from Romania in 2000. Mother and J.S. adopted Chloe from China in 2002 or 2003. Mother was asked why she went overseas to adopt children when it appeared that she already had a household full of children and she testified:

Well, you know, it's easy - - I mean, not real easy, but in - - you know, there's a lot of people that want to adopt in the United States, and there's like a seven-year wait for a young child, anyway, to adopt a baby or a young child, and I just started seeing these television programs about these children that were in poor health and needed homes, and so I started inquiring about it. I went through the Catholic charities here in Chattanooga, took all their classes, got my certificate through them, and I realized it was going to cost me about \$20,000 or more, so then I started shopping around for a little bit cheaper rate, to see what I could, actually, afford and how I could go about it, and that's how I ended up with All of God's Children, and that's who I adopted through. Which you start out with the home study, an international home study, which is like \$1,500. It's much more extensive than the regular home study you go through here. And then you've got about an 18-month wait, of coming up with money, travel expenses and all of that.

Savannah had lived with Mother for approximately five years before being taken into State custody, and Chloe had lived with Mother for approximately two years at that time. At the time Savannah was adopted, Mother had her biological daughter Tanya and her adopted son Michael living in the household along with several therapeutic foster children.

Mother testified that during the summer of 2004, Michael was interviewed by authorities because a therapeutic foster child in a psychiatric hospital in Knoxville had made allegations of being touched by a former foster brother whose name she could not remember. Mother testified that Michael was cleared of that allegation. At that time, Mother was living in Georgia, and she sent Michael to Tennessee to live with Tanya so that he could be interviewed. Mother testified that Michael continued to live in Tennessee after that incident. When asked why Michael remained in Tennessee, Mother testified:

More than one reason. Michael was in high school when we moved to Chatsworth, Georgia. He never really made a lot of close friends there. He had close friends in Tennessee. A matter of fact, the home right across the road from us, where he presently resides, he had friends, and he just was more comfortable there, so he was still living in my home, with my birth daughter, so I didn't see that there was a problem, and if that's what he wanted to do, that was fine with me.

Mother and J.S. adopted Selena, Jason, and Magen in June of 2005 in the State of Georgia. After Mother adopted Selena, Jason, and Magen in Georgia, the family moved back to Tennessee. However, Jason did not move into the house with Mother, J.S., and the other Children, but instead went to live with Mother's biological son and his wife, Scott and Lenex. Mother testified:

Lenex has had several miscarriages, and they never had a son, and once they started visiting us in Georgia, she - - they had become very bonded with Jason, and so she was like coming down and picking him up a couple days and keeping him on her

days off, and every moment she could be around him, she was around him. So they had developed a relationship, and they even met the birth mother, so it was in everybody's agreement that that would be the best place for Jason.

Mother testified that Scott and Lenex filed to adopt Jason before the Children were taken into State custody. After the Children were taken into State custody, DCS placed Jason back into Scott's and Lenex's home, and Jason remained there through the time of trial. DCS is in favor of Scott and Lenex adopting Jason, but Mother opposes having her rights to Jason terminated. Mother stated: "I do not want my rights terminated to Jason. He can - - they can proceed to adopt him from me, as we originally planned." Mother admitted that the total amount of time that Jason lived with her was during a period of about six months and that during that time Jason spent several days each week with Scott and Lenex. When asked, Mother insisted that Jason did bond with her and stated "he bonds with me as a grandparent. He calls me Grandma." Mother admitted that there is no parent/child bond between her and Jason.

Mother testified that Selena is a liar, but testified that she does not think that Savannah lies. Mother testified that she thinks the foster mother is lying about Savannah's behaviors "[b]ecause Savannah was nothing like that."

Mother was asked about the sexual abuse perpetrated by Michael, and the following exchange occurred:

Q. So, to this day, you still don't believe that Michael sexually abused either one of those children?

A. If he did, I don't know how he did it.

Q. No. The question is, Do you or don't you?

A. Do I believe it? If Savannah believes it, I believe it.

Q. That's not an answer to my question.

A. I don't know how, but if - - if that's what she believes, then I'm going - - I'm going to say I have to - - I believe her.

Q. I'm going to ask one more time.

A. Uh-huh.

Q. To this day, do you still believe that Michael did not sexually abuse Selena or Savannah?

- A. I believe something happened, somewhere, but I don't know what it was, and I don't know how it happened.

Later during the trial, Mother was questioned further about the abuse, and the following answers were elicited:

- Q. How, then, ma'am, do you explain to the Court the finding by a [sic] clear and convincing evidence that two of the children in your care were, in fact, sexually abused by their older stepsibling [sic]?

- A. Because on the first motion, I was stupid enough to believe the attorney in waiving the hearing, not realizing I was taking a guilty plea, and thinking - - and only hearing that I was going to get my children back in three days, and not realizing what I was doing.

And the second time around, I just - - I don't know. The second time around, I think the Referee was just so overwhelmed with dragging it on for 18 months that I think he just looked for the first way to make an answer.

- Q. So the explanation is not that it happened and you missed it?

- A. No.

- Q. The explanation is that it did not happen?

- A. If it happened, it had to have been - - I don't know how it happened, because I don't - - I don't know how someone can sexually abuse a child when they're in a completely different state, when they have no driver's license and they don't drive, and they're not around the child. I find that - - I have a hard time understanding how that can happen.

Mother testified that Michael was never left alone with the Children. Mother testified: "Most of the time, he was over at Trey's house across the road." Mother further testified that if she had to go to the store the Children "went with me. They were with me."

With regard to the sexual abuse of Selena, Mother testified: "If it happened, I don't know how it happened." With regard to the sexual abuse of Savannah, Mother testified: "I believe Savannah believes, just like she believed the little boy in the classroom.... She believed that her private parts was the hair on her head."

Mother admitted that as of the time of trial, Michael lives with friends just across the street from her house. When asked if she thought it was appropriate for Savannah to be in such close proximity to Michael if she were returned to Mother's custody, Mother testified:

I wouldn't want to go back there myself, no.... It's not where I stay all the time. I stay at the hospital most of the time, in the assisted living facility there, because I don't need a big house by myself. What I'd like to do is, my parents live in Georgia, my sister lives in Georgia, I would like to go back and be near my parents, where they can help me with the children.

When asked about the allegations involving Savannah and a washcloth, Mother testified:

Sometimes [Savannah] would come to me and she'd say, My butt butt [sic] itches, it burns, it burns, it itches. And my immediate response is she's not cleaned herself properly. So I - - I would check her, and sometimes I would find a lot of crud up and around her vagina and down around her rectal area, and I would wash her with a washcloth. The way I'm taught on my job is, if you don't clean someone, that's abuse and neglect. If I do do it, I'm sexually abusing them. So I'm not quite sure which is the right way to go here.

When asked why the incident Savannah spoke about occurred in the living room and not the bathroom, Mother testified:

That's correct. What she would consider by living room, in our house, we had a split foyer, the main living area is on the bottom, where you have your kitchen, your big living area, your formal dining room, and accessories. On the top floor is four bedrooms and another big open area that we had an extra formal living room. In the bathroom, you have a very narrow area next to the tubs, that's cold linoleum. Savannah's tall and slim, if you remember correctly. She's too big and bulky to check if she needs to be checked for anything, so what I did was take the children - - I lined up. I had a one-year old, a 2-year old, a 3-year-old, a 4-year-old and a 6-year-old, and I lined up their pajamas and things right outside their bedroom in the open living area on the top floor. And, at that time, it was like an assembly line. If my mom was there, she helped me. We would go down. The babies had diapers, and the others - - others did whatever they could. Selena was the only one that could, actually, dress herself. I never checked Selena. I was never worried about her, other than rinsing her hair. So I would send them one at a time out.

When it come Savannah's time, she would attempt to dress herself, but most of the time, on her panties, she'd have the legs in the wrong holes or she'd have the pajamas buttoned the wrong way, if even at all. So I would go in and start to assist her, to finish getting dressed, and I don't see how anybody can make anything sick or dirty out of trying to take care of children.

Mother was again asked how she explained Savannah's disclosure and Mother stated:

Honestly, I don't recall [J.S.] ever being - - standing there watching anything. The only explanation I can give you is, it was probably a bath time when she was waiting on me to come and dry her off and dress her. I don't have any other explanation for that, other than I have cleaned her when she's been dirty.

Mother and J.S. obtained a divorce approximately two months after they adopted Selena, Jason, and Magen in Georgia. The divorce decree from a court in Hamilton County, Tennessee did not mention the existence of the Children. Mother testified: "The question that was asked to me was, was there any children born to this marriage, and I said, No, and that was the - - that was the only question I was ever asked." When asked if any of the documentation or paperwork that she filed with the court for the divorce led her to believe that the children had to be named, Mother testified: "Not at that time. It didn't seem like it was an important thing." Mother and J.S. remarried several months after obtaining that divorce. Mother and J.S. were divorced a second time three or four months prior to trial.

Mother was questioned further about her divorces from J.S. and the following testimony was elicited:

Q. Why did you and your husband divorce two weeks after adopting three children?

A. What happened - - what happened in that particular divorce was more of a financial issue. The property in Tennessee was in my name, and, at that time, he had gotten into a business venture with one of the men he worked with, and the company was going under, and I was doing that, primarily, to protect my interest in my property.

Q. And did you disclose to your attorney that you had adopted children?

A. The only question he asked me was, Is there any birth children born to this family, and I said, No.

Mother was asked if she believes that J.S. ever sexually abused Selena or if J.S. ever spanked the Children with a belt. She testified that she does not believe either of these allegations. Specifically, Mother stated: "I think I would have saw that." Mother testified that she worked a weekend option schedule so she was gone from the home on Fridays and Saturdays and would come home on Sundays. When asked who cared for the Children while she worked, Mother testified: "On Fridays, at that time, Selena and Savannah were in school and they went to after-school, after - - on Fridays, until [J.S.] got off to pick them up, and Chloe and Megan were in daycare on Friday." When asked who cared for the Children on Saturdays, Mother testified: "Oh, [J.S.] took care of them, and sometimes - - I know Lenex came down a lot." Mother admitted that J.S. was alone with the Children most Fridays, and Saturdays until Mother returned from work on Sunday. When asked how she would know whether J.S. ever physically disciplined the Children or molested Selena,

Mother testified: "Well, she didn't say anything about it, and Selena is very verbal, and she never told me." Mother was asked if she was aware of any time that J.S. struck the children with a belt and she replied "I - - I don't believe he ever did. I never saw it."

Mother testified that when she lived in Georgia, she also had a foster child named Amanda. When Mother decided to move back to Tennessee, Mother was going to give Amanda back to the State of Georgia. However, Mother testified that Amanda "would scream, every time the transporter would come or someone different because she had never been around anyone else. She was like 18 months old then." Mother testified that her mother, Ms. Morrow, got a house in Georgia and got approved by the State of Georgia to keep Amanda when Mother moved back to Tennessee. At that time, the plan was for Amanda to be returned to her biological mother in the near future.

Ms. Morrow testified at trial that she was an approved transporter in the State of Georgia, but, contrary to Mother's testimony, was not a certified foster parent approved to keep Amanda. When asked if Mother had ever notified the State of Georgia that Amanda was being left with her, Ms. Morrow testified: "Well, [Mother] had a home in Georgia that they visited." Ms. Morrow testified that she would live with Amanda part of the time in her own home and part of the time in Mother's house in Georgia. Ms. Morrow testified that Mother had only been in Tennessee a couple of weeks before the State of Georgia came to take Amanda.

Mother testified that after she was told that she needed to bring Selena and Savannah in for a forensic examination:

When I got back to town, I was out talking, and we were preparing the girls to go to the CFCC, and I was trying to explain to them what was going to happen to them, because I was afraid they'd be scared, you know. I said, They're going to check you, and trying to go through the details of what was going to happen. And Selena laughed and said, Oh, I'm not worried, I've done this before. And I - - I looked at her real funny, and I looked at Tanya, and she looked at me. And I go, You've been through this before? She says, Oh, yes, back with my Uncle A.J. And I said, Okay, then you know what to expect. And so I proceeded to tell Savannah what to expect. And I says - - I said, You - - I said, What are you - - What are you telling me? I said, Why didn't you tell me?... I said, [Selena], Why did you not tell me that Michael touched you? Well, I was afraid that you'd be mad. I was afraid that he'd go to jail. And I said - - I was, at that point, furious with her. I said, Why did you not tell me? Well, I was afraid that - - that Michael would go to jail. I said, Okay.

But, that's the first time she ever really told me anything, and that's - - that's what I was mad at her about, and I swatted her on the - - I, actually, swatted her on the bottom. I said, Why did you lie to me, why didn't you tell me this, why did you - - you know, why did you wait to do this, why didn't you just come and talk to me

about it? She never gave me - - other than just she was afraid Michael would go to jail.

Mother testified that a few days later the State came and took the Children, and she and J.S. were arrested. Mother testified that Michael was in jail in Juvenile at that time.

Mother was asked if she had training to recognize behaviors of a child who had been sexually abused and she replied: "I think that - yeah. Because they go around and they're either, you know, touching or playing with themselves, or touching themselves inappropriately. Savannah did not do those things. Absolutely not, she did not do these things."

Mother testified: "in the 13 years I had Michael, he never gave us a day of trouble in his life. He was a good kid. He made good grades. He studied. And he was obedient." Mother testified that Michael was charged with child molestation and rape and that he took a plea bargain "because he thought that was the right thing to do." Mother does not know the exact charge that Michael pled to and testified "I've not talked to Michael in over two years." Mother testified:

I asked the State, or I asked, I think it was Patty Elliston, what they wanted me to do. And she said, Well, if you have anything to do with Michael, you'll never get your girls back. So I - - I took that as a definite, I will not have anything else to do with Michael. Michael was grown. He lives in a good home. I - - I knew he didn't need me, and so I made the decision then to work at trying to get the girls back and let him go on with his life.... I attempted to divest him, because that's what she suggested me to do. That's what I was told - - ... I went down to Juvenile Court and I filed the papers, but it - - I don't think it was ever granted.... I think he's 19 now.

When asked how long it has been since she spoke to Michael, Mother testified: "I went to BiLo one day to rent a shampooer and he was working the counter, and I spoke to him briefly and walked out the door."

Mother admitted that Selena had told her after DCS became involved but before Selena and Savannah underwent the forensic examinations that Michael had sexually molested her. Mother was asked why she had spanked Selena for telling her about the abuse when Mother had previously testified that her family discipline involved time-outs and withholding privileges. Mother testified: "I was frustrated with her. I didn't - - if you want to call a swat on the bottom a spanking. I just, why did you not tell me? You know, why did you lie to me? You know, and she says, I was afraid Michael would go to jail." Mother was asked if she threatened to take the Children out of school because she believed that was where they had made the disclosures about the sexual abuse and Mother testified:

I didn't threaten to. I, actually, took them out of school.... Because I spoke at work to some of the other nurses and they were homeschooling [sic]. At that time, I had no idea the children were going to be removed from my home, so I thought it would

be better to homeschool [sic] her, rather than to go through this, going to school and telling whatever she - - you know, she told, you know. I guess it was my way of trying to solve the problem.

Mother was again questioned about the abuse the girls suffered, and the following exchange occurred:

Q. You, again, when you were talking to your attorney, indicated that when you were living in Tennessee, that on the weekends, [J.S.] watched the children, and you were not present. So since there were at least three weekends in August that [J.S.] was watching the children, when Michael - - was Michael living in the home at the time?

A. Michael was there, but I took him to Cartersville with me.

Q. So for those - - you took him out of school on Fridays - - or I guess he wasn't in school.

A. No.

Q. So he never was in Tennessee - -

A. I took him to Cartersville with me on weekends because we were looking at North Metro College, as taking his college credits there.

Q. So every weekend he was in Georgia. You said that when Michael was charged that you tried to divest because he was in a good home. Since when is the Juvenile Detention Unit a good home for a child?

A. The divestment was suggested to me by the same person, Patty Elliston, when I asked her what they wanted me to do. I said, What options do I have and what do you want from me? And I was told if I had anything to do with Michael, I would never get my girls back. My response is, What am I supposed to do? And she said, You can do a divestment. And I said, What is that? She explained to me where to go and how to do it, and I did what she suggested.

Q. So you went and filed a petition - -

A. Uh-huh.

Q. - - to divest Michael because you thought you'd get your children back, without any regard for this child that had been in your home for 13 years, while he was still in the Juvenile Unit of Hamilton County?

A. Because they had told me he had molested my children, yes.

* * *

Q. But, now, two-and-a-half years later, you still don't believe that anything ever happened?

A. I think something happened somewhere along the way. I don't know where or when or how, but I certainly - - I - - I still can't contemplate the different state situation. If it happened, I think it had to have happened at the Tennessee home, after we returned.

Q. After two-and-a-half years of participating in proceedings like this on a numerous basis, probably, at least 20 or 30 hearings in the last two-and-a-half years, and hearing, like, Mr. Morehead and myself discuss the issue of your understanding of your children's need to be safe with you, has it ever occurred to you that if you were in counseling that you might today, two-and-a-half years later, understand better your children's perspective on this?

A. I've talked to four counselors and I've put out \$50,000 on counselors and - - and attorneys and other situations trying to understand this situation and I still don't understand it. I don't understand how people can break into your home and steal your kids without a warrant, paperwork or anything, and make false allegations, and keep your children away from you for two years, and that's certainly not the state law. So, no, I don't understand what's going on here, not to this day.

Q. But, do you understand what's going on with your children?

A. Yeah.

Q. Do you understand what's going on with Savannah?

A. Yeah, I do.

Q. What's going on with Savannah?

A. She's being lied on.

Q. Do you mean people are lying about her - -

A. Uh-huh.

Q. - - or being lied to?

A. I think - - I think the foster mother is lying. That is not Savannah's behaviors. It never was.

Q. What - - why would Savannah's foster parent lie about that?

A. I don't know. You'll have to ask her that question.

Patricia Hartman, a case manager and special investigator for Child Protective Services, became involved in this case in August of 2005 after allegations were made of sexual abuse of Selena and Savannah by their brother, Michael. Mother brought Selena and Savannah in for the forensic examination but refused to sign the consent form for the girls to be interviewed. Ms. Hartman testified that she had to seek legal counsel and "almost bring the children into custody there at that point just to get the exams completed." Ms. Hartman testified that Mother told her:

The children were removed from school. She said that she took them out of the school so they would not have anyone to carry their lies to.... Well, she had called Selena a liar on numerous times. She said that Selena always got in trouble for lying, and that she couldn't believe anything that she said. She frequently got in trouble for lying. She talked about Selena bringing her a pair of Selena's panties and they were colored red on the inside, and Selena said this is what happened when Michael touched her. She got a spanking for lying.

Ms. Hartman testified that the day the Children were removed, she saw the police bring the Children up from the basement and then Ms. Hartman went down to the basement and:

I saw the room - - the children told me that that's where they were. The police officer said that that's where they - - they found them. This was - - of course, [Mother and J.S.] had been removed by that point. Selena and Savannah both came up to me, crying. I told them I was going to take them, and they were going to another place, and both children thanked me.

Ms. Hartman testified that initially she knew about Selena, Savannah, Chloe, and Magen. She did not know about Jason until later after she called Georgia for a history and was told there were more children.

Ms. Hartman testified that on the day the forensic examinations were done, she spoke with Mother and Mother made comments about Selena. Ms. Hartman testified:

[Mother] said [Selena] was a liar, she always got in trouble for lying, it was the worst thing that they had to deal with, with her. There were some regrets. I asked her about comments that I had been told by the child, and she - - about being told over the weekend that if she said anything about Mom, that she was going to pack her bags and take her - - or give her away. [Mother] confirmed that for me, that, yes, she did do that, she did say that. She said she did it in an effort to stop Selena from lying.

Ms. Hartman also testified that Mother talked about Michael and stated:

That first morning, when I talked to [Mother] over the phone, she was coming in, she said, because we had put in a safety plan over the weekend, where Michael was staying with Tanya..., her daughter, she said that they had to go out of town and they wouldn't be able to keep him that whole week, and so they needed to get this wrapped up.

Ms. Hartman was asked about the decision to remove the Children and was asked why it was so important to remove them immediately if Michael was out of the home. She testified:

Increasing safety factors.... When I called Georgia to get history on the children, I found out they were a Georgia foster parent living in Tennessee. They had a residence in Georgia. We had two unknown children that we had no idea where they were. The risk of flight. The children disclosing that over the weekend they were punished for their disclosures. Plus, the - - just the risk of things in Georgia.

Ms. Hartman testified that both Selena and Savannah told her that they were punished for making the disclosures. When asked where Michael went, Ms. Hartman testified that he went to live with a relative for the first weekend and then was arrested and came into foster care because he was seventeen years old at that time. When asked why she was concerned about Jason when Jason was in a safe location, Ms. Hartman testified:

He was never identified by either parent as being their child. He was never identified as any of the children, as being the brother. When I asked each child, who do you live with, who is - - who is your - - you know, who is your family, that child was never mentioned.... He was their child.... Legally, he had been adopted by [Mother and J.S.].

Ms. Hartman testified that she asked Mother who her children were and Mother disclosed the names of her adult children, but never mentioned Jason. Mother also never mentioned Amanda to Ms. Hartman and Ms. Hartman testified: "The State of Georgia had no idea where that child was. We had to send the police to find her." When Ms. Hartman was asked about why it was so urgent to remove the Children when Jason's location and Amanda's location could be determined and Michael had been removed from the home, Ms. Hartman testified:

The parents' failure to protect their children from ongoing sex abuse.... [I]f you have parents that don't believe that the abuse happened to their child, and they're punishing the child for these disclosures, you have damage to the child, even though the alleged perpetrator is no longer in the home.

Kelly Oliver Dyer has been the DCS case manager for the Children since November of 2005. Ms. Dyer started off being the case manager for six of Mother's children.

When asked if Mother had ever been able to provide DCS with evidence that she had completed the permanency plans, Ms. Dyer testified:

No. I don't think the counseling needs have been met, and that is, to me, the most important thing, because that's what's going to ensure the protection of these children. I think that when [Mother and J.S.] were seeing Dr. Biller, he did have some information. I don't know that he had all of the information that he needed, but I think that was, probably, the closest she got. When her counseling with him discontinued and she went - - she did tell me she had another counselor, and I frequently tried to contact them, and I was told that releases had not been signed and they could not talk to me.

Ms. Dyer testified that she requested that Mother sign these releases several times. When asked if Mother had then signed them, Ms. Dyer testified:

Not through him. Not for - - I believe it's Terry Stulce. I was later informed by [Mother] that he said she didn't need any counseling.

Recently, she had been - - I guess saw Dr. Butters. They did inform me that she did sign a release, and I faxed over information. I requested a face-to face visit because we've had this whole issue of, did Mom address this with the counselor, did Mom do that with the counselor, does the counselor have the whole picture? I wanted to go meet that counselor face-to-face so I was very clear that this man knew what Mom needed to address, and he did not have time in his schedule for me, so I was left no choice but to fax the information, and now I've been told by [Mother], again, that this counselor says he can't do anything for her. But, I believe that's because he doesn't have all of the information and doesn't realize how serious this is for these children.

Ms. Dyer testified about visitation between the Children and Mother and J.S., which was supervised by Dr. Biller stating:

Before I came onto the case, they had had a few visits in the office. A couple of them didn't go very well at all, and I believe, at that point, there was no visitation after that.

Some of the children felt isolated, treated - - Selena was definitely treated very different than the other children in those visits. The other children got gifts. It was a party. Selena got coloring books and crayons. She spent the time of her visit playing with the other children's toys. After that, it became obvious they had a distaste for Selena as far as, you know, they - - they just didn't seem nurturing toward her like they did toward the other children.

At that point, they scheduled a separate visitation, where Mom and Dad visited with Savannah for an hour, I believe, and then visited with Selena for an hour, and that visit went a little bit better because there were no other children around.

Ms. Dyer testified that the visits were stopped in July of 2006 after a child and family team meeting where the counselors said they believed the visits were becoming detrimental to the Children. Some telephonic visitations were attempted. Ms. Dyer further testified:

[W]e saw some changes in the children after the telephone calls.... Regression, kind of backsliding in some things. Savannah had resolved some of her - - she had some OCD type behaviors related to her condition. She had stopped kind of shuffling the papers. She didn't do it quite as frequently. She began shuffling the papers more intently. She became obsessed with thoughts of Michael. I mean, the child almost couldn't function. And that's when I started requesting permission from [Mother] to give her anxiety medication. She would have imaginary phone calls, many of which I witnessed myself, with Michael, on any toy phone, to the point that I had to ask the foster parent not to let the child have any toys [sic] phones anywhere.

If I took her to an appointment, I made sure that I picked up any toy phones that were in the room and put them away, because she would sit and have these imaginary phone calls with Michael.

She was - - had wet her pants several times. One, specifically, happened after a face-to-face visit with Mom and Dad. She just peed in the floor.

Savannah, actually, called me and told me she did not want to go to her visit. She - - after even a visit with the other children would set Savannah off, as far as emotionally. [Mother's] daughter-in-law was at one of the visits with the children, and the counselor then called me and said, I don't know what happened at this visit with the other children, but [the daughter-in-law] was there and Savannah freaked out in counseling, and the counselor requested that I not allow her to do that again.

Ms. Dyer testified that Savannah:

has some pretty serious boundary issues. She has a problem keeping her hands to herself in regards to other children. Savannah readily admits that as well, at a recent doctor's appointment two weeks ago, when the doctor asked her why she was there, she says, Because I can't keep my hands off of the other kids. So Savannah knows what her issues are.

Ms. Dyer testified:

You know, off and on, throughout this whole thing, children have been placed together as much as we could keep them together, but, you know, Savannah and Selena had been - - we had to separate those because of inappropriate touching, because Savannah was trying to stick her hands down Selena's pants. So the counselors didn't really recommend - - they would see each other at counseling, when they were having counseling time together, separate counseling, but there was time allotted in there before counseling of Savannah and between their counseling times, which were back to back, for them to visit at the CAC.

Ms. Dyer testified that she stopped making efforts toward reunification after the finding of severe abuse because "when we have a finding of severe abuse on any child, it is no longer in their best interest to be in that home, and the petition for termination was filed not too long after that." Ms. Dyer testified:

Well, at one point during court proceedings, it was announced that [Mother and J.S.] were going to surrender their rights to Savannah - - I'm sorry, to Selena, Jason and Megan, so, therefore, no visits would really be necessary if they were going to surrender their rights.... I did know that they frequently at the time was having contact with Scott and Lenex so they could see Jason, pretty much, whenever, and it was put in that Scott and - - it always had to be supervised. But, there was no indication to me from [Mother] that she wanted to see Selena or Megan, and [Mother], actually, did - - her and [J.S.] both surrendered their rights to Selena, so no visitation at all was ever necessary for her.

Ms. Dyer was asked about visitations that occurred while Magen and Chloe were in the same foster placement, and she testified:

And that was one of the problems that the children were having, was a little bit of irritation and aggression toward each other. Chloe would come home and tell Megan, I saw Mommy and Daddy, Mommy and Daddy don't love you. I heard her say that to Megan myself, as well as what the foster parents reported. So it - - it caused Megan some stress.

Ms. Dyer further testified: "[Mother] did indicate to me that she was going to fight for all four of the children. And I was, like, When did that change, when did you decide you wanted

Megan and Jason, but you didn't inform me? Yet, [Mother] never point-blank asked me to see Megan." Ms. Dyer testified that Magen is in a home with foster parents who want to adopt her.

Ms. Dyer testified:

I would say Jason is the least problematic because he's been in the same placement for such a long period of time, and that's great for him. That's - - that's exactly what we want to see from our foster kids, that - - that kind of stability.

Selena is now in a possible adoptive home, and her behaviors are starting to stabilize, as far as, you know, her anxiety, her stress, that feeling of not being loved is starting to go away.

Chloe is starting to open up a whole lot more than she did in previous foster homes. She's almost a different - - completely different child. When I look at her when I first got the case, as opposed to today, granted, she's a little older, but she seems a little more carefree, almost like a weight's been lifted off of her.

Megan is - - you know, it looks to me like Megan's loving life. She learned to ski over the summer, water ski at 4-years-old. She's - - you know, she's stable.

Savannah, you know, she has some more serious issues, but she has, you know, some psychological issues, some delays. You know, I've been told she's been diagnosed with I think the consensus is fetal alcohol syndrome. You know, she's going to continue to have issues because she's the most needy of the bunch, but her school - - the stability has provided her to improve at school. Last year was pretty rough. I hear she's doing pretty well this year. I've spoken with her teachers a couple of times. She's - - Savannah is still having a problem with peer interaction.

When asked if she saw any advantage to keeping these children together in the same foster placement per usual DCS policy, Ms. Dyer testified: "No. That's just like asking for a - - an explosion." When asked if she saw an advantage to having the children placed back with Mother, Ms. Dyer testified: "No. I - - I - - I'm sorry. I believe that would be about the most detrimental and destructive thing for those children."

Ms. Dyer, who was formerly Michael's case worker, was asked if it would be appropriate to have the children living across the street from Michael and she stated: "No. The last thing, especially Savannah, would need is to - - is to see Michael across the street. She already has an intense fear. I - - I just - - I don't - - that - - that scares me for the child."

Ms. Dyer testified:

I have seen a great deal of Savannah's behaviors firsthand. Typically, it starts when the foster parent calls me and says, I don't know what to do, and, you know, I get in the car and I drive to the foster home.... There's been instances where I've been in the home and Savannah's being just obstinate, refusing to follow any directions, refusing, at one point, to even speak. She just wouldn't talk for two or three days. You know, just freaking out about Michael. I've been up there, you know, seen her - her jitteriness, her anxiousness. I've seen her happy. I've seen her sad. I've seen her - you know, when she's on punishment, she can't watch TV. But, I have - I have seen her acting out on some of the children, as well.... Sometimes it's just been a normal visit. I've gone up there just to, you know, check on the girls and see how they're doing. You know, like I said, I do see them at the school, but I do try to see them in the home as much as possible. And Savannah always has to be touching somebody. I mean, it's just - it's - to me, it's - I - I've had to say, Savannah, you have to keep your hands to yourself. I've heard her being redirected, going, You're going to have to go to time-out because you're touching other people.

She will - specifically, one incident, there's an MR baby, a baby with Down's Syndrome that's in the home, Savannah was sitting next to her on the floor, leaned forward into her, put her forehead right up against hers, kind of pushed her backwards, and then kissed her on the mouth. I've seen several things related to that specific child, putting her hands like right at the diaper line, underneath her legs, pulling her into her lap, she will frequently do that, and the kid's screaming, thrashing, trying to get down, and Savannah's just gripped on her, and the foster parent will have to walk over and pull the child out of her hand. And everybody's standing there going, Savannah, Let [sic] go, Savannah, let go.

I have seen her do similar things with Chloe. Some of it's just wrestling around, but, you know, there's a point where some of that wrestling around has crossed the line. Putting her hands up under the shirts, just typical, in - in my opinion, inappropriate touching of the child.

Ms. Dyer testified:

I think I was, actually, bringing [Savannah] back from an appointment, for her psychological in Cleveland, with Dr. Biller, and we passed a police car, and she relayed to me the whole story about how the police came and arrested Michael, how the police had taken [Mother] and [J.S.] away. So she didn't really like police cars. And I talked to her a little bit about that, and in the process of that conversation, she did tell me that she had told [Mother] that Michael had been touching her.... She told me it was during a phone call, and Savannah's version of the story was, the phone rang, it was Mom, Mom talked to Michael, Mom talked to her, Mom talked to Michael again, Mom yelled at Michael, Michael went to his room and locked the door and did not come back out. There were no other adults in the house. I said, Did

Mom come home? No. Did Dad come home? No. What about the other kids?
Selena had to change the baby's diapers.

Ms. Dyer testified that "Megan stated that [J.S.] used to walk around into her room and Selena's room naked." Ms. Dyer testified:

I think the children's best interest, right now, is stability. I think it would be great if, you know, Mrs. Eyrich could take on Chloe and Savannah. I'm not sure that that's going to be the case. But, the other three children are in, basically, permanent homes. It's just, you know, a formality of getting it done. I think any kind of disruption of what stability they have - - they're finally starting to make some attachments. They're trying - - they're finally starting to settle down, and I'm afraid of the consequence. It's going to be a total dishevelment of their lives, and I - - that - - that concerns me for them, because they've had so much turmoil already, I'm not sure that - - you know, as resilient as children are, I'm not sure how much more they can take.

Ms. Dyer testified that she does not have any concern with Jason being placed with family members. Ms. Dyer testified:

[Mother] has said to me that she did not think Scott and Lenes was where Jason needed to be. She's said that on several different occasions, several phone calls, several face-to-face interviews, that she wished we would move Jason, that that was not an appropriate placement. And, frankly, she told me that Scott and Lenes were alcoholics. And, of course, my job is - - I go back and back track all that stuff. I had frequent conversations with Scott and Lenes to address these issues, and I was reassured that there was no real issue, and that's why he's still there. I - - I think that's where he needs to be. I think that they love that child, and I don't think if they - - if they didn't love him, I don't think they'd still being [sic] going through this.

In response to a hypothetical posed, Ms. Dyer testified: "I can't set the sexual abuse issues aside. That is - - I'm just not - - I can't even think that way. I so believe these girls have been abused, I, you know...." When asked what her biggest problem with Mother having the Children back was, Ms. Dyer testified: "She failed to protect them and sexually abused at least one of them."

With regard to the multiple residences reported by Mother, Ms. Dyer testified:

I had conversations with [Mother] regarding where she lived. I, specifically, asked her about the home in Chatsworth. She told me that had been sold, or was on the market. She is a nurse in Marietta, so she also had an apartment down close to where she lived - - where she worked. When she and [J.S.] separated, [J.S.] was supposedly living in a trailer in Charleston. When I tried to send certified information to him, I was told that the address did not exist. When I asked for clarification on an address

to send him things, I was told to send things to the Ooltewah address, which is where [Mother] resides.

When asked if she feels that Mother is stable in her residence and particularly which state she actually resides in, Ms. Dyer answered “No.”

The Trial Court entered a Final Order on August 8, 2008 incorporating the Trial Court’s Memorandum Opinion entered February 6, 2008 in which the Trial Court found and held, *inter alia*:

Two petitions were filed in Juvenile Court for the removal of these children from [Mother’s] home. The first alleges [Mother] failed to protect Savannah..., age 6, and Selena..., age 7, from sexual abuse perpetrated upon them by their 17 year old brother, Michael.... Allegedly, Selena and Savannah made clear disclosures about the abuse in their interviews. Selena alleged she told her mother of the abuse and was punished by spanking. It further is alleged the mother took the children out of school so Selena could not “spread lies.” At the adjudicatory hearing, [Mother] announced that out of love for the children and out of concern for their best interests, she no longer contested the Department’s petition for temporary custody and wished to waive the adjudicatory hearing and neither admitted nor denied the allegations in the petition.... The Juvenile Court then made a finding that by clear and convincing evidence, the parents failed to protect at least two of the children from sexual abuse perpetrated upon them by the 17 year old brother, Michael.... A second petition for temporary custody was filed by the Department against [Mother and J.S.] alleging that the father, [J.S.], had sexually abused Selena on more than one occasion by fondling her and attempting to make the child fondle him as well. Savannah allegedly has disclosed that [Mother] had fondled her on more than one occasion. DCS further alleges each parent failed to protect the children from the other. Based upon these allegations, the State asked that the Court find the children to be victims of severe abuse.

In the findings and recommendations of the Referee ..., the Juvenile Court Referee found that each parent failed to protect the children from the other parent and as a result committed severe sexual abuse against Savannah and Selena. The Juvenile Court Referee concluded the parents ignored what occurred in the home and failed to protect the children. He concluded the mother acted with deliberate ignorance and reckless disregard in failing to see the signs of abuse in her children.

Concerning the statutory requisites at T.C.A. 36-1-113, the Court must determine whether grounds for termination of parental or guardianship rights have been established and whether or not that termination is in the best interest of each child. The bases for termination are found at T.C.A. 36-1-113(g).

* * *

T.C.A. 36-1-113(g)(2) states termination may be based upon a substantial noncompliance by a parent or guardian with a statement of responsibilities in the permanency plan or a plan of care pursuant to the provisions of Title 37, Chapter 2, Part 4. The Court finds the permanency plans at issue are contained in Exhibits 12, 13, 14, and 15. Each of these plans was approved by Referee Curtis Bowe November 1, 2006. Each of these plans included in the actions needed to achieve the desired outcome [Mother's] continuation in therapy and receipt of recommended counseling in regard to failure to protect the child from sexual abuse, parenting responsibilities with regard to parenting a sexually abused child in her home, understanding the nature and impact of abuse as it relates to this parent's effective parenting skills and abilities and the impact of the failure to report sexual abuse and the parent's ability to obtain treatment for a sexually abused child in the home. She was required to actively participate in the child's counseling as recommended by the child's therapist and to complete counseling as recommended by her clinical interviewer. Under the provisions for [J.S.], it was required that [J.S. and Mother] acknowledge the sexual abuse suffered by Selena and Savannah, any failure to protect them from sexual abuse and failure to report the sex abuse. This language is eliminated under [Mother's] name in the permanency plans for the children. However, it is clear she was required to continue in therapy to adequately understand the dynamics of sex abuse, living with a child who has been sexually abused and how to protect a sexually abused child. The Court finds by clear and convincing evidence [Mother] has failed to obtain an adequate understanding of sexual abuse, living in a home with sexually abused children, the impact of failure to report sex abuse, and an understanding of the nature of and impact of abuse as it relates to her effective parenting skills and abilities. Although she has received some counseling, her repeated refusal to acknowledge the involvement of Michael in the abuse, despite the findings of guilt of Michael, demonstrates her lack of understanding as to how this abuse impacts the children. Further, her punishing Selena for lying and her taking the children out of school because of her understanding that the abuse had been reported by Selena to the school also demonstrate her lack of understanding. The Court finds by clear and convincing evidence that her failure to complete therapeutic treatment in this regard constitutes substantial noncompliance by [Mother] with the statement of responsibilities in the permanency plan for each of these four children.

The State alleges that the children were removed from the home because of conditions which still persist. T.C.A. 36-1-113(g)](3). The Court finds the children had been removed from the home by order of a court for a period of longer than six months. There were two bases for removal. The first gave rise to the August 31, 2005 temporary custody petition. The Court finds the conditions which led to the children's removal from the home at that time are the allegations of sexual abuse by

the brother, Michael, and the allegations of failure by [J.S. and Mother] to protect Selena and Savannah from Michael. The conditions which led to the second petition, November 14, 2005, are the allegations of sexual abuse by each parent and the alleged failure of the other parent to protect the children from that sexual abuse.

The Court finds by clear and convincing evidence that Michael did abuse the children. Although [Mother] continues to articulate a belief that such abuse did not occur at Michael's hands, the Court finds by clear and convincing evidence that it did. The Court does not find, however, by clear and convincing evidence that [Mother] abused Savannah or that she knowingly failed to protect the children from the alleged acts of [J.S.] or the acts of Michael.... [Mother] is credible in her assertion that what Savannah reported could only be an incident of cleaning the child. There is insufficient evidence she knew of the alleged conduct for this Court to determine by clear and convincing evidence she knew of the abuse or a propensity of the brother or father for such abuse to enable this Court to find she failed to protect the girls. The Court also does not find by clear and convincing evidence that [J.S.] abused the children. While the State is adamant that Selena is to be believed, the court finds the testimony of Dr. Fillers, [Mother], and other witnesses create issues as to the extent to which Selena was to be believed and whether or not Savannah disclosed any abuse to her mother. Clear and convincing evidence is "evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." The Court does not feel that standard has been met as to the failure to protect allegations or the allegations of abuse by [J.S. or Mother].

The two principal reasons for removal have been remedied. Michael no longer is a part of the family. He is an adult and [Mother] has severed all contact with him. [J.S.] and [Mother] are divorced and there was no evidence there was any contact between him and any of the children. He has surrendered his parental rights to all of these children. The Court is not persuaded that [Mother] sexually abused Savannah and finds she did not. There remains the concern from the State that [Mother] does not acknowledge the abuse and would not be able to protect the children from abuse. This is the concern addressed in the permanency plans discussed above and found at Exhibits 12, 13, 14, and 15. As [Mother] has not complied with the therapy recommendations as required by the permanency plans, she has not addressed one of the conditions that led to the children's removal from the home. The Court acknowledges the importance of this concern. [Mother] has acknowledged that something happened to these children. She has testified she does not doubt that something did occur. She does not believe it was at the hands of Michael or [J.S.]. The Department emphasizes her punishing Selena for lying about the disclosure is grounds for further abuse. While the Court finds it quite credible that Selena has lied about many things, the Court is concerned that [Mother's] action in pulling the children out of school and spanking Selena for the disclosure of abuse are evidence of her lack of sophistication in understanding child sexual abuse. She

has had some counseling in this area but not a sufficient amount to eliminate the risk of her failing to detect and respond appropriately to a future incident of sexual abuse. As she remains persuaded she does not need additional counseling and that Michael did not abuse the children, there is little likelihood her failure to detect the abuse can be remedied at an early date so that the children can be safely returned to her in the near future. (The concept of “early date” seems out of context in this discussion as these proceedings have been extremely lengthy in the lives of these very young children.) T.C.A. 36-1-113(g)](3)(B).

The Court finds that the continuation of the parent and child relationship between [Mother] and Jason, Chloe, Magen, and Savannah would greatly diminish each of those children’s chance of early integration into a safe, stable, and permanent home. T.C.A. 36-1-113(g)(3)(C).

The Court may terminate parental rights if severe child abuse is found. T.C.A. 36-1-113(g)(4). The Court finds [Mother] did not knowingly expose any child to or knowingly fail to protect any child from abuse. The Court does not find any brutality, abuse, or neglect which has caused any of these children to develop or to be expected to develop any of the factors listed in the definition of severe child abuse (T.C.A. 37-1-102(b)(21)) or any of the acts included in section (c) of that definition. The Court finds [Mother’s] actions were not intentional and that she had a reasonable basis for not believing Selena when first confronted with the issue. The Court further finds there is no clear and convincing evidence that she failed to protect Serena [sic] or Savannah and, accordingly, having determined she did not sexually abuse Savannah, makes no finding of severe abuse.

* * *

Accordingly, the Court finds that grounds for termination of [Mother’s] parental rights to Savannah..., Jason..., Chloe..., and Magen... have been established by clear and convincing evidence. Her demonstrated continuing lack of understanding of child sexual abuse constitutes grounds under T.C.A. sections 36-1-113(g)(2) and (3). Therefore, the Court must address the best interest factors found at T.C.A. 36-1-113(i).

The Court finds [Mother] has acknowledged something occurred which was of a detrimental nature to the children, yet she continues to deny Michael abused the girls. The Court further finds the number of children in the home at the time the alleged incident occurred impacted on her ability to adequately supervise and interrelate with each child, thereby decreasing her ability to detect the sexual abuse which was occurring. The removal of Michael and [J.S.] from the home is a significant adjustment of circumstance and condition which make the home safer.

T.C.A. 36-1-113(i)(1). Further counseling can address [Mother's] understanding of abuse.

The Court finds the difficulties in entering into a permanency plan, agreeing on counselors and counseling and the course of action concerning the best interest of these children was contributed to equally by [Mother] and the Department of Children's Services. Therefore, it is difficult to address factor (2) (T.C.A. 36-1-113(i)(2)) because of difficulties between the two.

T.C.A. 36-1-113(i)(3) addresses visitation and contact by the parent with the child. Most efforts of [Mother] to visit with these children have been blocked by the State and DCS. Therefore, she has not maintained regular visitation or contact with them. The Court believes a different concern is being addressed in the best interest test than in the abandonment test. The Court believes the legislature was addressing the opportunity for a healthy relationship between the parent and child in addition to the parent's efforts to maintain contact. There has been very little contact between [Mother] and the children and the Court concludes that absence of contact would have a greater impact on the younger children than the older. Their memory of a relationship with [Mother] is more likely to be absent and the bond, if any, weaker.

There is little proof concerning the relationship between the younger children and [Mother]. The Court finds a meaningful relationship does exist between Savannah and [Mother]. The proof is inconclusive as to the relationship between her and the other children. The parent-child relationships between the foster parents of Jason, Chloe and Magen are stronger than the relationship between each of these children and [Mother]. T.C.A. 36-1-113(i)(4).

T.C.A. 36-1-113(i)(5) addresses the effect of a change of caretakers and physical environment. The younger children have had much less disruption in their lives than has Savannah. These children were adopted by [Mother and J.S.] at very young ages and went into foster care from [Mother's and J.S.'s] care in a relatively short time frame after adoption. Savannah has not adjusted as well to foster care. There is ample evidence from the foster mother of the difficulty she is having in foster care. The Court finds Savannah will undergo a change of caretakers and physical environment whether she returns to [Mother's] care or to a different foster home. Therefore, placing the younger children back with [Mother] would not be in their best interest. Permitting them to be adopted by their respective foster parents would be. However, returning Savannah to an environment with which she is familiar, with Michael and [J.S.] completely eliminated from that environment, and [Mother] being more focused on sexual abuse issues and on her because of these proceedings makes such a change to [Mother] in Savannah's best interest. With the return of only Savannah to [Mother's] custody, she can focus on and appropriately parent Savannah.

The Court finds [Mother] has not subjected any of the children to abuse or neglect and no person resides with her at this time who has done so. T.C.A. 36-1-113(6).

The Court finds no contraindicated physical environment factor which precludes the return of the children to the home being in their best interest. T.C.A. 36-1-113(7).

The Court finds with just one child in the home [Mother] is capable of providing stable care and supervision for Savannah. T.C.A. 36-1-113(8).

[Mother] has been in substantial compliance with her child support obligations. T.C.A. 36-1-113(9).

Accordingly, the Court concludes that grounds for termination of the parental rights of [Mother] to all four children have been established by clear and convincing evidence. The Court further finds by clear and convincing evidence that termination of [Mother's] parental rights to Jason..., Chloe..., and Magen... is in the best interest of each of those children. However, termination of [Mother's] parental rights to Savannah... is not in Savannah's best interest. Chloe, Jason, and Magen are in stable foster homes and the evidence establishes each respective foster parent wishes to adopt the child in that foster home. They do not have a parent-child relationship bond with [Mother]. The same is not true of Savannah.... She is not in a foster home with parents who wish to adopt her and she has a stronger bond with [Mother] than does any of the other three children. The Court finds [Mother] will prevent any contact by Michael or [J.S.] with Savannah. Accordingly, the petitions to terminate parental rights are sustained as to Jason..., Chloe..., and Magen... and denied and dismissed as to Savannah....

DCS, the guardian ad litem, and Mother all filed motions to alter or amend, which the Trial Court denied. Mother appealed the termination of her parental rights to Jason, Chloe, and Magen to this Court.

Discussion

Although not stated exactly as such, Mother raises three issues on appeal: 1) whether the Trial Court erred in finding clear and convincing evidence existed to support the termination of Mother's parental rights to the Children under Tenn. Code Ann. § 36-1-113(g)(2); 2) whether the Trial Court erred in finding clear and convincing evidence existed to support the termination of Mother's parental rights to the Children under Tenn. Code Ann. § 36-1-113(g)(3); and, 3) whether the Trial Court erred in finding that clear and convincing evidence existed that the termination of Mother's parental rights is in the best interest of Jason, Chloe, and Magen. DCS and the Children's

guardian ad litem raise an issue regarding whether the Trial Court erred in finding that the termination of Mother's parental rights was not in Savannah's best interest.

Our Supreme Court reiterated the standard of review for cases involving termination of parental rights stating:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

In re F.R.R., III, 193 S.W.3d 528, 530 (Tenn. 2006).

In *Department of Children's Services v. D.G.S.L.*, this Court discussed the relevant burden of proof in cases involving termination of parental rights stating:

It is well established that "parents have a fundamental right to the care, custody, and control of their children." *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). "However, this right is not absolute and parental rights may be terminated if there is clear and convincing evidence justifying such termination under the applicable statute." *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)).

Termination of parental or guardianship rights must be based upon a finding by the court that: (1) the grounds for termination of parental or guardianship rights have been established by clear and convincing evidence; and (2) termination of the parent's or guardian's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c). Before a parent's rights can be terminated, it must be shown that the parent is unfit or substantial harm to the child will result if parental rights are not terminated. *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Similarly, before the court may inquire as to

whether termination of parental rights is in the best interests of the child, the court must first determine that the grounds for termination have been established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c).

Dep't of Children's Servs. v. D.G.S.L., No. E2001-00742-COA-R3-JV, 2001 Tenn. App. LEXIS 941, at **16-17 (Tenn. Ct. App. Dec. 28, 2001), *no appl. perm. appeal filed*. Clear and convincing evidence supporting any single ground will justify a termination order. *E.g., In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

In pertinent part, Tenn. Code Ann. § 36-1-113(g) provides:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

* * *

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;

(3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(i) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home....

Tenn. Code Ann. § 36-1-113(g) (2005).

The Trial Court found that clear and convincing evidence existed to terminate Mother's parental rights to the Children under both Tenn. Code Ann. § 36-1-113(g)(2) and (3). Specifically, the Trial Court found, *inter alia*:

The Court finds by clear and convincing evidence [Mother] has failed to obtain an adequate understanding of sexual abuse, living in a home with sexually abused children, the impact of failure to report sex abuse, and an understanding of the nature

of and impact of abuse as it relates to her effective parenting skills and abilities. Although she has received some counseling, her repeated refusal to acknowledge the involvement of Michael in the abuse, despite the findings of guilt of Michael, demonstrates her lack of understanding as to how this abuse impacts the children. Further, her punishing Selena for lying and her taking the children out of school because of her understanding that the abuse had been reported by Selena to the school also demonstrate her lack of understanding. The Court finds by clear and convincing evidence that her failure to complete therapeutic treatment in this regard constitutes substantial noncompliance by [Mother] with the statement of responsibilities in the permanency plan for each of these four children.

* * *

As [Mother] has not complied with the therapy recommendations as required by the permanency plans, she has not addressed one of the conditions that led to the children's removal from the home. The Court acknowledges the importance of this concern. [Mother] has acknowledged that something happened to these children. She has testified she does not doubt that something did occur. She does not believe it was at the hands of Michael or [J.S.]. The Department emphasizes her punishing Selena for lying about the disclosure is grounds for further abuse. While the Court finds it quite credible that Selena has lied about many things, the Court is concerned that [Mother's] action in pulling the children out of school and spanking Selena for the disclosure of abuse are evidence of her lack of sophistication in understanding child sexual abuse. She has had some counseling in this area but not a sufficient amount to eliminate the risk of her failing to detect and respond appropriately to a future incident of sexual abuse. As she remains persuaded she does not need additional counseling and that Michael did not abuse the children, there is little likelihood her failure to detect the abuse can be remedied at an early date so that the children can be safely returned to her in the near future.

The evidence, as already set forth in detail in this Opinion, does not preponderate against these findings made by the Trial Court by clear and convincing evidence.

Having found that grounds for the termination of Mother's parental rights to the Children were proven by clear and convincing evidence, we now turn to the issue of whether the Trial Court erred in finding that it was in the best interest of Jason, Chloe, and Magen for Mother's parental rights to be terminated. With regard to this issue the Trial Court specifically found and held, *inter alia*:

There is little proof concerning the relationship between the younger children and [Mother].... The parent-child relationships between the foster parents of Jason, Chloe and Magen are stronger than the relationship between each of these children and [Mother]. T.C.A. 36-1-113(i)(4).

T.C.A. 36-1-113(i)(5) addresses the effect of a change of caretakers and physical environment. The younger children have had much less disruption in their lives than has Savannah. These children were adopted by [Mother and J.S.] at very young ages and went into foster care from [Mother's and J.S.'s] care in a relatively short time frame after adoption.... Therefore, placing the younger children back with [Mother] would not be in their best interest. Permitting them to be adopted by their respective foster parents would be.

The evidence, as set forth in detail in this Opinion, does not preponderate against the Trial Court's findings made under the clear and convincing evidence standard that it was in the best interest of Jason, Chloe, and Magen for Mother's parental rights to be terminated.

Finally, we consider whether the Trial Court erred in finding that it was not in Savannah's best interest for Mother's parental rights to be terminated. The Trial Court specifically found that "[Savannah] is not in a foster home with parents who wish to adopt her and she has a stronger bond with [Mother] than does any of the other three children." While it may be true that Savannah has a stronger bond with Mother than the younger children by virtue of her age and the amount of time she spent with Mother and that Savannah is not in a foster home with parents who have decided definitely to adopt her, these factors are not the only ones to be considered. The evidence shows clearly and convincingly, as found by the Trial Court, that Mother refuses to accept that Michael sexually abused Savannah. The evidence also shows that Michael lives in very close proximity to Mother's house. The evidence shows that it would be extremely detrimental for Savannah to be subjected to any contact with Michael. As Mother has never accepted the truth about the sexual abuse perpetrated by Michael, the evidence is clear and convincing that she is not capable of understanding the importance of insuring that Savannah be protected from any and all contact with Michael. Further, the evidence is clear and convincing that Mother would not be able to recognize and appropriately respond to future sexual abuse of Savannah, if that situation ever arose.

The Trial Court found that counseling could assist Mother to learn how to parent a sexually abused child. However, Mother has had more than ample opportunity to obtain counseling, and she has indeed attended counseling sessions. The important fact with regard to the counseling is that Mother still categorically refuses to accept that Savannah was sexually abused by Michael, and, as such, any counseling is wasted. Mother's complete and total refusal to accept the truth about the sexual abuse perpetrated by Michael renders further counseling useless. We find and hold that the evidence clearly and convincingly shows that it would be in Savannah's best interest for Mother's parental rights to be terminated. Given this, we reverse the Trial Court's determination that it was not in Savannah's best interest for Mother's rights to be terminated, and Mother's parental rights to Savannah are terminated. The remainder of the Trial Court's opinion is affirmed.

Conclusion

The judgment of the Trial Court that grounds for terminating Mother's parental rights to all of the Children under Tenn. Code Ann. § 36-1-113(g)(2) and (3) were proven by clear and convincing evidence is affirmed. The judgment of the Trial Court that it was in the best interest of Jason, Chloe, and Magen for Mother's parental rights to be terminated is affirmed. The judgment of the Trial Court that it was not in the best interest of Savannah for Mother's parental rights to be terminated is reversed, and Mother's parental rights to Savannah are terminated. The remainder of the Trial Court's judgment is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, D.S., and her surety.

D. MICHAEL SWINEY, JUDGE